FILE COPY

Office-Supreme Court, U.S.
FILED
OCT 1958
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 427

JAMES CRIMM

Petitioner

-vs.-

THE STATE OF MISSISSIPPI

Respondent

PETITION FOR WRIT OF CERTIORARI

J. O. HOLLIS, Attorney
Carthage, Mississippi

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No._____

JAMES CRIMM

Petitioner

-vs.-

THE STATE OF MISSISSIPPI

Respondent

PETITION FOR WRIT OF CERTIORARI

To: The Honorable Supreme Court of the United States:

Considering himself aggrieved by a final decision of the Supreme Court of the State of Mississippi in rendering judgment against him, petitioner, James Crimm prays that a Writ of Certiorari issue to review said judgment, the same having been rendered on June 9, 1958 in which the decree of the Chancery Court of Scott County, Mississippi, was affirmed. Suggestion of error having been overruled by said court on July 3, 1958. A transcript is hereby transmitted with this petition as follows, to-wit:

1. Assignment of Errors in the Supreme Court of the State of Mississippi.

2. Brief of Appellant filed in the Supreme Court of Mississippi.

3. Judgment of the Supreme Court of Mississippi in this cause.

4. Suggestion of Error filed with Supreme Court of Mississippi.

5. Order over-ruling Suggestion of Error.

6. Petition for appeal by way of petition for Writ of Certiorari and petition for stay of Execution of Judgment.

7. Order allowing appeal, Stay of Execution and fixing bond.

8. Appearance Bond.

9. Petition for leave to proceed in Forma Pauperis.

10. Affidavit in support of petition for leave to proceed in Forma Pauperis.

11. Acknowledgment of Service.

12. Order allowing appeal in Forma Pauperis.

13. Praecipe to Clerk of Supreme Court of Mississippi.

14. And all of the proceedings had and done in the Trial Court.

STATEMENT OF CONSTITUTIONAL QUESTION

Petitioner avers that for a conviction to be based upon the evidence as shown by the record would constitute a denial of a fair and impartial trial as guaranteed Petitioner under the due process and equal protection clauses of the fifth and fourteenth amendments to the Constitution of the United States of America, and also the due process clause of Article 3, Section 14, of the Constitution of the State of Mississippi. Furthermore, the punishment fixed by the Court was and is excessive and in violation of the eighth amendment to the Constitution of the United States of America as well as article three, section 28 of the Constitution of the State of Mississippi.

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the final judgment of the Supreme Court of Mississippi under Title 28, U. S. C., Section 1257 (3), and the Revised Rules of the Supreme Court of the United States and in particular Rule 10 and the paragraphs thereunder governing appeals from a State Court, this Court has jurisdiction.

STATEMENT OF THE CASE

Respondent, the State of Mississippi, acting by and

through and upon relation of Roy Noble Lee, District Attorney for the Eighth Circuit Court District, filed a petition for contempt citation in November, 1957, returnable to the regular December, 1957 term of the Chancery Court of Scott County, Mississippi.

The petition alleged that on or about April 9, 1954, a Bill of Complaint was filed in this cause in the name of the State of Mississippi, upon relation of Roy Noble Lee, District Attorney, praying to suppress and abate, as a common nuisance, certain property therein described and to enjoin Petitioner and his wife, Mrs. Lucille N. Crimm, from violating the prohibition laws of the State of Mississippi on said premises therein described, and as a result of said petition, a fiat was issued and a temporary injunction was issued on April 9, 1954 by the Chancery Clerk of Scott County, Mississippi, which was duly served on Petitioner and his wife, Mrs. Lucille Crimm, on April 9, 1954, and that on April 7, 1955, a final decree was entered by the Court, dismissing the Bill of Complaint as to Mrs. Crimm and making final and permanent the said temporary injunction as to James Crimm, petitioner herein, and perpetually restraining and enjoining him from keeping, possessing, and selling intoxicating liquors on certain described premises and the temporary suit for Writ of Injunction as made final and permanently suppressed and abated as a common nuisance the place, building and premises as therein described (P. 3, 4, and 5 of Record).

The said petition for contempt citation alleges four separate and distinct violations of the injunction, as granted, against Petitioner, namely June 8, 1957, August 5, 1957, September 9, 1957, and November 13, 1957.

Petitioner herein filed an answer in the lower court denying each and every allegation contained in said petition and on December 3, 1957, trial was had.

At the conclusion of all testimony in the lower court, the Chancellor found (R. 108) that "but for sale of liquor on November 4, 1957, to Mr. Davis, the Justice of the Peace of Scott County, Mississippi, this petition for contempt could hardly be sustained." By the findings of the Chancellor, the State of Mississippi failed to meet the required burden of proof in order to convict on charges in the said petition for violating the injunction on June 8, 1957, on August 5, 1957 and on November 13, 1957. The Court, therefore, found Appellant guilty of contempt beyond all reasonable doubt and fixed the punishment therefor at six months in the county jail and a fine of $1,500.00 and all costs (R. 108).

ARGUMENT AND REASON FOR GRANTING WRIT

The power and authority of the Chancery Court to enforce its orders and decrees is inherent and therefore beyond question, but in this case, Petitioner submits that the findings of the learned chancellor are contrary to the overwhelming weight of the evidence; that Petitioner was denied a fair and impartial trial as guaranteed Petitioner under the due process and equal protection clauses of the fifth and fourteenth amendments to the Constitution of the United States.

Curtis Davis, a Justice of the Peace of District Four, Scott County, Mississippi, testified as to the sale of intoxicating liquor upon which the learned Chancellor based his opinion for contempt (R. 75-82). The testimony cor-

roborates that of other witnesses in that he drove to the home of Petitioner in an automobile after dark and turned around near the cemetery, which is located West of Petitioner's home, as shown by a plat as an exhibit to the testimony of Mr. Burkes, and returned, stopping his car on a public street, or gravel road (R. 79). The record shows by all witnesses that Petitioner's home is located very close to the street running North and South at that point and on which witness Davis stopped his car. It was after dark and this car was headed South on the street with Petitioner's home to the rear and to the left of Witness Davis. The only conflict in the testimony is that Petitioner went into his home to pick up the bottle of liquor Justice of the Peace Davis claims to have purchased from Petitioner instead of going North on this said street and on the West side thereof to get the liquor, which would place the location where the liquor was obtained on premises not described in the injunction and in the petition for contempt and on land owned by another across the street. The Mississippi Supreme Court has repeatedly held that in order to punish for contempt, the State must prove beyond a reasonable doubt that the liquor held, stored, or sold must be found or sold on premises particularly described. See Rochelle vs. State, 75 So. 2nd, 268 (1954).

On the evidence presented in the case at bar, the Petitioner submits that the Court was in error in totally disregarding the testimony of witnesses, Mrs. Lucille N. Crimm and Donald Husband, when considered in conjunction with the physical lay-out of the property and its proximity to the public graveled street and that this sale took place after dark. The testimony is undisputed that the public street running North and South on the West

side of Petitioner's premises was a graveled street and that when Justice of the Peace Davis parked on this occasion, his car was in the street or graveled road and not on Petitioner's premises. Witness Davis was never at any time on premises of Petitioner until later that night, when he accompanied the Sheriff and Deputies in conducting a search of Petitioner's premises. Petitioner therefore submits that the lower Court was manifestly in error in completely disregarding the unimpeachable testimony of these two witnesses and in so disregarding this testimony Petitioner has been denied a fair trial and due process of law as contemplated by the Constitution of the United States as heretofore pointed out. The State wholly failed to meet the burden of proof.

Assuming, but not admitting, that the Trial Court was correct—finding "from the evidence that Petitioner went into the house and got the liquor; that Davis saw him go in; that Petitioner brought the whiskey back out to Davis; that Davis paid to Petitioner the price he asked; that the house, Petitioner's residence, is situated on the premises as described in the original bill, injunction and petition therein" (R. 108); nevertheless, the sentence of the Trial Court for one small sale of "Old Crow Whiskey" in violation of its injunctive order by fixing the punishment at six months in the county jail, fifteen hundred dollars, ($1500.00) fine and all cost of court was and is excessive and in violation of the eighth amendment to the Constitution of the United States as well as Article three, Section twenty-eight of the Constitution of the State of Mississippi.

As heretofore pointed out, the Court erred in permitting the State over the objection of Petitioner herein

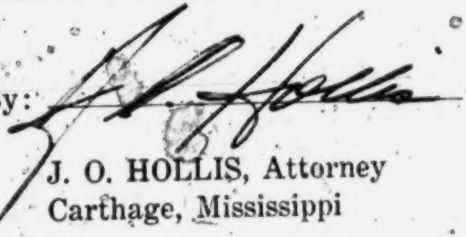
to amend the petition for citation for contempt in paragraph two, sub-section "C" to show that on November 4, 1957, the Petitioner sold intoxicating liquor, instead of on November 13, as alleged in the petition, especially, since November 4 was the only date upon which the learned Chancellor based his decision (R. 92). The amendment changed the petition in substance as well as form. To permit these amendments to stand would constitute a denial of due process of law as guaranteed under the Constitution of both the State and Federal Government and would constitute a denial of Petitioner's right under Article 3, Section 26 of the Mississippi Constitution as well as Amendment Six to the Constitution of the United States which would guarantee to Petitioner the right to demand the nature and cause of the acusation made against him, said denial did seriously prejudice the rights of Petitioner; made it impossible for him to make proper preparation for trial; and did rob him of such identification of the offense from the standpoint of time as would insure him against a subsequent prosecution therefor. These amendments go to substance and not merely as to form.

Petitioner reserves the right to file a more complete brief.

PRAYER

Wherefore Petitioner prays that a Writ of Certiorari issue to the Supreme Court of the State of Mississippi in this cause to the end that this cause may be reviewed and determined by this Court, and that the judgment of the said Supreme Court of Mississippi, may be reversed by this Court, and for such other relief as this Court may deem proper.

JAMES CRIMM, Petitioner

By: 

J. O. HOLLIS, Attorney
Carthage, Mississippi

CERTIFICATE OF SERVICE

I, J. O. Hollis, Attorney for Petitioner, do hereby certify that I have this day mailed, postage prepaid, to Honorable Joe T. Patterson, Attorney General of the State of Mississippi, a true copy of the foregoing petition for Writ of Certiorari.

This the 30th day of September, 1958.

J. O. HOLLIS